No. 25-170

In the Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC., ET AL., PETITIONERS

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY, ET AL.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF COLORADO

REPLY BRIEF FOR THE PETITIONERS

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Respondents do not dispute that, whatever the cause of action, all of their claims share the same underlying theory: that the global conduct of selected energy companies increased the global use of fossil fuels, which resulted in increased greenhouse-gas emissions, which, when mixed with emissions from billions of other global sources over many decades, contributed to global climate change and resulted in global harms. Respondents do not dispute that this lawsuit is one of a coordinated series of similar lawsuits—nearly 60, at last count—by state and local governments around the country. Respondents do not dispute that, on their theory, any state, city, or even individual in the country could bring similar claims. And respondents do not dispute that the intended effect of these lawsuits is to impose an enormous "carbon tax," in the form of billions of dollars of damages, that could "bankrupt" the energy industry.

For those reasons, this litigation is unlike any other in American history—with climate-change advocates seeking to bypass the political process and achieve sweeping policy objectives through state-law causes of action against arbitrary groups of defendants in handpicked forums. But while the litigation may be novel, the principles barring the claims are not. In a self-contained proceeding, the Colorado Supreme Court definitively held that federal law does not preempt respondents' claims. That holding was erroneous.

Two distinct but related constitutional principles bar respondents' claims. *First*, the Constitution's structure bars the application of state law to certain inherently federal areas, including interstate-pollution disputes. Citing "the basic scheme of the Constitution," this Court has unanimously held that it would be "inappropriate" to apply "the law of a particular state" to resolve climate-change claims against the emitters of greenhouse gases. *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 421-422 (2011). It would be illogical to permit claims to go forward against the producers of fossil fuels, which stand further removed in the causal chain. And it would be nonsensical to hold that state law can apply in areas in which this Court has recognized that "state law cannot be used," *City of Milwaukee* v. *Illinois*, 451 U.S. 304, 313 n.7 (1981), simply because, as respondents argue, Congress chose to displace federal common law with a federal statute.

Second, the Constitution's prohibition on extraterritorial regulation independently precludes a State from extending its law beyond its borders to regulate global conduct with undifferentiated global effects. Respondents seemingly embrace the breathtaking position that a State can extraterritorially apply its law to conduct in another State whenever the effects of the conduct are felt within that State—no matter how tenuous the connection between the defendant's conduct and the in-state effects. That cannot be the law in our federalist system.

The problems with respondents' claims do not stop there. The use of state law to regulate global climate change would also infringe on the exclusive role of the President and Congress in foreign affairs. And far from authorizing the application of state law, the Clean Air Act independently preempts any effort by one State to impose its law on emissions nationwide.

Whether independently or collectively, these principles foreclose respondents' unprecedented use of state law to address a global issue. A Boulder jury should not be allowed to make national and international energy policy. The Colorado Supreme Court erred by permitting respondents' claims to go forward, and its judgment should be reversed.

I. THE COURT HAS STATUTORY AND CONSTITUTIONAL JURISDICTION OVER THIS CASE

A. The Court Has Jurisdiction Under 28 U.S.C. 1257(a)

The Court has statutory jurisdiction both because this case arises from a final determination of the Colorado Supreme Court in a self-contained original proceeding, and because it falls within the fourth category of cases identified in *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975).

1. As to the first ground for statutory jurisdiction: *Atlantic Richfield Co.* v. *Christian*, 590 U.S. 1 (2020), is directly on point. Respondents primarily argue (Br. 18-19) that *Atlantic Richfield* does not apply here because petitioners asked the Colorado Supreme Court to "review and reverse" the trial court's decision, and the Colorado Supreme Court ultimately remanded. But the very same

was true in *Atlantic Richfield*. See 408 P.3d 515, 518, 523 (Mont. 2017).

Respondents contend (Br. 16-18) that the relevant distinction is between the exercise of "original" and "appellate" jurisdiction. But *Atlantic Richfield* makes clear that the correct inquiry is not whether the decision under review resembles an appeal in the sense that it reviewed the substance of a lower-court decision, but rather whether the proceeding was discrete from the underlying lawsuit and thus "a self-contained case" under state law, such that the ensuing decision is final for purposes of this Court's review. See 590 U.S. at 12. And to the extent that the Colorado Supreme Court was exercising its "general superintending control" over the trial court (Br. 19-20), Colorado law establishes that it was still exercising *original* jurisdiction, as distinct from ordinary appellate review. See, *e.g.*, *Cameron* v. *District Court*, 565 P.2d 925, 928 (Colo. 1977); Colo. App. R. 21(a)(1) & cmt. to 2024 amend. Like other States, Colorado has separate procedures for self-contained original proceedings and direct interlocutory appeals. See Colo. App. R. 4.2(a), (h).

Respondents are left to invent a rule that state-court proceedings qualify as final under *Atlantic Richfield* only when parties "seek writs against the trial court." Br. 22. But nothing in *Atlantic Richfield* suggests that limitation; again, the relevant inquiry is simply whether the proceeding is "a self-contained case" distinct from the underlying litigation. 590 U.S. at 12; see Former State Supreme Court Justices Br. 5-6. Regardless, the trial court here was a direct object of the order to show cause, which would have been made "absolute" if petitioners had prevailed. J.A. 141-142; see Colo. App. R. 21(*o*).

2. As to the second ground for statutory jurisdiction: the fourth *Cox* category requires only a showing that a federal issue has been definitively resolved and that the

petitioner "*might* prevail on the merits on *nonfederal* grounds," such that future review of the federal issue would be "unnecessary." 420 U.S. at 482 (emphases added). That is the case here. Reversal on the federal issue would end the litigation, because respondents have not asserted claims here based on "source-state law" or "in-state emissions." Br. 15. And delayed review would expose one of this Nation's most critical industries to untold liability, which is more than enough to threaten a serious erosion of federal policy. See U.S. Br. 3-4, 27-28. Effectively acknowledging the fourth category's applicability here, respondents assert (Br. 16) that the Court should overrule *Cox*, but they offer no justification for that drastic step.

B. The Court Has Jurisdiction Under Article III Of The Constitution

The Court has constitutional jurisdiction because petitioners plainly have Article III standing. Respondents' suggestion (Br. 11-14) that petitioners lack a personal stake in the dispute sufficient to confer standing lacks merit.

1. Most obviously, petitioners suffered an Article III injury because the decision below definitively and adversely adjudicated their legal rights: specifically, their federal preemption defense, with the result that petitioners have lost their "right[s] to engage in certain conduct" "free from [state-law] requirements." *Murphy* v. *National Collegiate Athletic Association*, 584 U.S. 453, 479 (2018). If the decision below is "left undisturbed," petitioners "will be bound by the conclusive adjudication" of that defense and face an increased risk of liability, not only in this case but in other pending and future cases in Colorado. *Maine* v. *Taylor*, 477 U.S. 131, 136 (1986); cf. *Camreta* v. *Greene*, 563 U.S. 692, 702-703 (2011). The

mere fact that petitioners may eventually be able to defeat liability on other grounds in this case does not eliminate their stake in the dispute, any more than the prospect of further proceedings did in *ASARCO Inc.* v. *Kadish*, 490 U.S. 605 (1989), in the face of a similarly definitive (but interlocutory) "adjudication of [federal] legal rights." *Id.* at 618; see *id.* at 611-612. Indeed, respondents' rule would jeopardize Article III standing to appeal a wide array of interlocutory orders commonly reviewed by appellate courts. See, *e.g.*, 28 U.S.C. 1292(b); Fed. R. Civ. P. 23(f).

2. Petitioners also suffered an Article III injury because they are subject to the burden of having to continue defending against respondents' claims. Monetary consequences flowing from an adverse decision constitute a cognizable injury-in-fact. See Pet. Br. 20; U.S. Br. 14. *Diamond* v. *Charles*, 476 U.S. 54 (1986), is not to the contrary; it reflects the unremarkable proposition that a party "cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit." *Steel Co.* v. *Citizens for a Better Environment*, 523 U.S. 83, 107 (1998). Here, by contrast, the decision below will force petitioners to incur ongoing monetary costs involuntarily. See *Seila Law LLC* v. *Consumer Financial Protection Bureau*, 591 U.S. 197, 211 (2020). Petitioners' "interest in avoiding [adverse] consequences" of the decision below gives them the "necessary personal stake in the appeal" for Article III purposes. *Lamps Plus, Inc.* v. *Varela*, 587 U.S. 176, 182 (2019) (citation omitted).

II. THE CONSTITUTION PRECLUDES STATE-LAW CLAIMS SEEKING RELIEF FOR INJURIES ALLEGEDLY CAUSED BY INTERSTATE GREENHOUSE-GAS EMISSIONS

Two independent constitutional principles bar state-law claims seeking relief for global climate change. *First*, under the principle of equal sovereignty, the Constitution limits the powers that the States previously enjoyed as independent sovereigns, with the result that States cannot apply their laws in certain areas, including interstate pollution. *Second*, under the principle of extraterritoriality, a State cannot extend its law to regulate conduct beyond its borders, such as conduct causing global climate change.

A. The Structure Of The Constitution Does Not Allow The Law Of A Single State To Govern Claims Concerning Interstate Emissions

The plan of the Convention required the States to surrender certain preexisting powers in order to ensure each State's equal sovereignty. See Pet. Br. 22-24; Alabama Br. 3-11, 15-16. Among those powers was the "forcible abatement of outside nuisances," such as air pollution from neighboring States. *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 237 (1907). (Another was the ability to conduct an independent foreign policy. See pp. 18-19, *infra.*) There can be no serious dispute that such a structural constitutional principle can have preclusive effect. See, *e.g.*, *Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738, 865 (1824); *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat) 316, 430-431 (1819). And based on that constitutional principle, this Court has long held that federal law necessarily and exclusively governs interstate-pollution claims, precisely because such claims implicate the conflicting rights of States over a shared natural resource. See Pet. Br. 26-27.

Respondents seemingly recognize (Br. 29) that the Constitution precludes applying state law to at least some interstate-pollution disputes. Respondents instead quibble (Br. 31-33) that the former federal common law of interstate pollution would not have covered their claims. Respondents further suggest (Br. 30) that, if the Constitution bars applying state law, it would be impossible for Congress to provide otherwise. And respondents insist (Br. 43-45) that, once Congress displaced the former federal common law of interstate air pollution, state law can operate unless Congress affirmatively preempts it. Each of those contentions lacks merit.

1. With regard to the scope of the former federal common law, respondents seemingly contend that, because the federal common law would not have provided a cause of action in these circumstances, the Constitution does not preclude a state-law claim. But that contention rests on the false premise that the scope of the available cause of action under the former federal common law defines the scope of what is *constitutionally* committed to federal law. The application of federal common law to interstate-pollution disputes was a manifestation of the constitutional principle of equal sovereignty. A federal court, exercising its authority to fashion common law, can decline to allow certain litigants to "invoke" a common-law cause of action. *American Electric Power*, 564 U.S. at 422; see, *e.g.*, *United States* v. *Standard Oil Co.*, 332 U.S. 301, 308, 314 (1947). But that does not make such claims any less "meet for federal law governance." *American Electric Power*, 564 U.S. at 422.

In any event, there is no merit to respondents' contention that the cause of action under federal common law was limited to "suits brought by one State to abate pollution emanating from another State." Br. 31-32 (citation omitted). As this Court has explained, "[w]hen we deal with air and water in their ambient or interstate aspects, there is a federal common law." *American Electric Power*, 564 U.S. at 421 (citation omitted). The interstate conflict hardly dissolves simply because a suit is being brought by a municipality rather than a State; in both instances, one State's law is applied to regulate an inherently federal area. See *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972). The same "overriding federal interest in the need for a uniform rule of decision" and "basic interests of federalism" exist. *Ibid.* And that is also true regardless of the form of relief sought. Cf. *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 498 n.19 (1987).

2. With regard to Congress's power to authorize the application of state law, the Court has previously called respondents' view "altogether fallacious," because it equates the "implied prohibition" of state law with the "affirmative endowment" of congressional authority. *Prudential Insurance Co.* v. *Benjamin*, 328 U.S. 408 (1946). "Congress certainly has the power to authorize regulations that burden or discriminate against interstate commerce," *Hillside Dairy Inc.* v. *Lyons*, 539 U.S. 59, 66 (2003), including in ways that would "otherwise not be permissible" if done by the States themselves, *Southern Pacific Co.* v. *Arizona ex rel. Sullivan*, 325 U.S. 761, 769 (1945). In this context, that makes good sense: any violation of a State's sovereignty is ameliorated when Congress acts, because "all segments of the country are represented[] and there is significantly less danger that one State will be in a position to exploit others." *South-Central Timber Development, Inc.* v. *Wunnicke*, 467 U.S. 82, 92 (1984).

In a related vein, respondents suggest (Br. 30-31) that, because petitioners have acknowledged that the law of the source State can apply in other contexts, petitioners have somehow conceded the question presented. That is a gimmicky claim. The fact that Congress has authorized the application of source-state law to a bilateral interstate-pollution dispute does not imply the broader authority to apply state law to a claim seeking redress for global climate change. Respondents conspicuously do not contend that Congress has authorized state law to apply to the latter type of claims. Indeed, those claims would be unlike anything Congress has ever authorized and would constitute a remarkable abdication of its authority over the Nation's foreign policy.

3. With regard to displacement, when Congress enacted the Clean Air Act, it displaced the former federal common law of interstate pollution (but notably did not displace federal common law as to claims based on international emissions). To the extent respondents contend that Congress was required affirmatively to preempt state law as to interstate emissions, that contention lacks merit.

a. To begin with, respondents' position is illogical. Despite respondents' feeble efforts to suggest otherwise, see pp. 14-15, *infra*, plaintiffs could not bring interstate-pollution claims under the affected State's law before the enactment of the Clean Air Act. The upshot of respondents' position, then, is that state law could spring into life after the Clean Air Act displaced the former federal common law of interstate pollution, even though Congress did not authorize the application of state law. But the reason federal common law governed in the first place was because, as a matter of structural constitutional principles, "borrowing the law of a particular State would [have been] inappropriate." *American Electric Power*, 564 U.S. at 422. The Clean Air Act obviously did not modify those principles. And where the Constitution otherwise prohibits the application of state law to an area, "congressional intent must be unmistakably clear" to permit state law to operate. *Wunnicke*, 467 U.S. at 91. Indeed, respondents seemingly admit that, when "federal interests predominate," the presumption against preemption does not apply. Br. 44. That is exactly the case here.

b. Respondents argue (Br. 27-30) that petitioners' constitutional theory "conflicts with" *Ouellette* and *American Electric Power*. But the opposite is true. In *Ouellette*, the Court held that the "only" permissible state-law actions seeking relief for interstate water pollution are "those specifically preserved by the [Clean Water] Act." 479 U.S. at 492. It proceeded to conclude that the saving clause in the Clean Water Act permitted only claims brought "pursuant to the law of the *source* State." *Id.* at 497. And in *American Electric Power*, the Court extended the same framework to the Clean Air Act, which contains a materially identical saving clause. See 564 U.S. at 429.

Respondents contend that, in *Ouellette*, the Court determined which actions were preserved by applying "ordinary field and conflict preemption." Br. 28. But the Court expressly based its analysis on the premise that "the control of interstate pollution is primarily a matter of federal law." 479 U.S. at 492. The Court reasoned that the saving clause "specifically preserves" application of the law of the source State but "does not *preclude* preemption of the law of an affected State," thus starting from the constitutional baseline that federal law applies. *Id.* at 493, 497. And it ultimately concluded that "[n]othing in the Act gives each affected State [the] power to regulate discharges" from other States; to do so would allow a State to "do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *Id.* at 495, 497.

To be sure, the Court described the presumption against preemption in *Ouellette*, but it explained that the presumption is limited to the "historic police power of the States." 479 U.S. at 491 n.11. Given its statement that "the control of interstate pollution is primarily a matter of federal law," *id.* at 492, there is no indication that the Court gave the presumption any meaningful weight. In any event, there is no basis to apply the presumption against preemption where, as here, Congress expresses its intent through a saving clause. Cf. *Puerto Rico* v. *Franklin California Tax-Free Trust*, 579 U.S. 115, 125 (2016).

Finally on this score, respondents point to *Puerto Rico Department of Consumer Affairs* v. *Isla Petroleum Corp.*, 485 U.S. 495 (1988). See Br. 44-45. But there, Congress repealed a federal law expressly preempting an area of traditional state authority—thereby reverting to the baseline of state authority. See 485 U.S. at 500. That is not the case here.

4. Respondents' claims fall within the exclusively federal area of interstate pollution because they seek relief for injuries allegedly caused by greenhouse-gas emissions worldwide. Respondents contend that their claims are "fundamentally different" because "they do not seek abatement of emissions by anyone." Br. 32. Even if that were true (despite the numerous references to abatement in their complaint, see J.A. 2, 79, 117, 136), respondents do not dispute that they are seeking to recover "billions of dollars" from petitioners for past and future climate-change harms. See J.A. 1-3, 114, 136-137. It is beyond disingenuous to suggest that an award of billions of dollars in damages would have no corresponding reduction of emissions, and this Court has previously rejected similar efforts to avoid preemption. See *Ouellette*, 479 U.S. at 498 n.19; *Riegel* v. *Medtronic, Inc.*, 552 U.S. 312, 324 (2008).

The stated intent and obvious effect of this lawsuit—and the dozens of other coordinated lawsuits—are to impose climate-change advocates' preferred policy of limiting greenhouse-gas emissions by limiting fossil-fuel production.

At various points, respondents seek to categorize their claims into "sales and production claims" and "deception claims." See, *e.g.*, Br. 4. But regardless of whether the initial conduct being targeted is the act of production or some related representation, respondents' claims seek relief for injuries allegedly caused by global climate change and are thus precluded by the Constitution. A plaintiff cannot avoid preemption merely by targeting upstream actors or relabeling its claims. See, *e.g.*, *Kurns* v. *Railroad Friction Products Corp.*, 565 U.S. 625, 635 (2012). Respondents offer no valid reason why "sales and production claims" and "deception claims" should be treated differently; as long as the plaintiff is seeking relief for global climate change, the equal-sovereignty principle applies equally to both.

Respondents' last resort is to complain that foreclosing their claims "would invite endless debate over what other subjects should be declared 'inherently federal.'" Br. 40. But petitioners' rule is grounded in history and precedent and is appropriately limited in scope. Respondents, by contrast, can cite no precedent permitting even remotely similar state-law claims to go forward. See pp. 14-15, *infra*.

B. The Constitution Does Not Allow States To Apply Their Law Extraterritorially To Reach Claims For Injuries From Global Climate Change

It is an "elementary principle" that "the laws of one State have no operation outside of its territory." *Pennoyer* v. *Neff*, 95 U.S. 714, 722-723 (1877) (citing Joseph Story, *Commentaries on the Conflicts of Laws* 28 (5th ed.

1857)); see *Fuld* v. *Palestine Liberation Organization*, 606 U.S. 1, 14 (2025). The prohibition on extraterritorial regulation, which is derived from "the Constitution's horizontal separation of powers," *National Pork Producers Council* v. *Ross*, 598 U.S. 356, 376 n.1 (2023), independently bars a State from using its law to govern conduct in another State. See Pet. Br. 24, 27-29.

Respondents seek to sidestep the extraterritoriality principle by invoking a rarely cited exception to it, arguing that there are certain circumstances in which the Constitution permits one State to apply its law to conduct in another. See Br. 35-38. Petitioners do not dispute that state law can govern out-of-state conduct where there is a sufficient connection between the State, the defendant, and the conduct at issue. See *Young* v. *Masci*, 289 U.S. 253, 258-259 (1933). But that exception applies in "ordinary" tort cases, not interstate-pollution disputes. See *Illinois* v. *City of Milwaukee*, 731 F.2d 403, 411 n.3 (7th Cir. 1984), cert. denied, 469 U.S. 1196 (1985). And even if it could apply here, the exception cannot conceivably reach claims seeking relief for global climate change.

1. To invoke the exception to the extraterritoriality principle, a plaintiff must show that the out-of-state conduct has direct, traceable, and particularized effects within the State of the kind that existed in *Masci* itself. See 289 U.S. at 258-259; U.S. Br. 21-26. In other words, the defendant must have a "constructive presence" in the State, meaning that his conduct must be directed to the State and produce sufficiently proximate effects there such that he can be treated as if he were present. See *Strassheim* v. *Daily*, 221 U.S. 280, 285 (1911).

Respondents reject that test, but they struggle to offer one of their own. At times, they seem to suggest that a State can extraterritorially apply its law to conduct in another State whenever the conduct has incidental effects within that State, no matter how remote the connection—an exception that would swallow the extraterritoriality rule altogether. See Br. 38. But respondents fail to identify any case in which bare harm in a State was sufficient to give it regulatory authority where the harm was diffused nationwide (and indeed worldwide) and the conduct was not targeted to the State. Although respondents claim to have unearthed a long line of cases deciding "transboundary environmental nuisance claims" under state law, Br. 39, all they can muster is a smattering of obviously distinguishable cases concerning damages caused by the *diversion* of water from one State to another and corresponding riparian-right disputes. See, *e.g.*, *State* v. *Lord*, 16 N.H. 357 (1844); *Stillman* v. *White Rock Manufacturing Co.*, 23 F. Cas. 83, 86 (C.C.D.R.I. 1847). If there were a "long tradition" of applying state law in this context, Br. 37, one would expect to see better evidence of it.

At other times, respondents seem to concede that the effects must have some causal nexus with the conduct. See Br. 37. But any such nexus here is extremely attenuated; at most, respondents contend that they will be able to estimate each petitioner's indirect contribution to greenhouse-gas emissions and then model how weather patterns would have changed without those emissions. See Br. 39 n.14. That falls well short of demonstrating that the out-of-state conduct has direct, traceable, and particularized in-state effects. And it is no answer that some type of causation would be an element of respondents' state-law claims, see Br. 37-38; the question here is whether, as a matter of federal constitutional law, extraterritorial regulation is permitted.

Petitioners' rule, on the other hand, permits extraterritorial regulation in appropriate circumstances. It would not bar the other categories of tort claims that respondents cite, such as those seeking relief for injuries caused by asbestos, automobile accidents, defamatory articles, defective medical devices, or Internet fraud. See Br. 24-25. In those circumstances, the defendant has engaged in conduct specifically directed at the forum State, such as shipping physical products into it. But claims seeking relief for global climate change do not arise from conduct specifically directed at *any* particular State. See Pet. Br. 28; U.S. Br. 24. Put simply, there is no way to permit these claims to proceed without eradicating the longstanding limitation on extraterritorial regulation and opening the floodgates to suits across the country targeting the conduct at issue here (and potentially other types of conduct as well).

2. Respondents suggest (Br. 25-27) that the limitations on state authority inherent in the horizontal separation of powers are fully embodied by the Due Process Clause, the Full Faith and Credit Clause, and the dormant Commerce Clause. Those provisions reflect the Constitution's basic treatment of the States as territorial units and evince the Constitution's concern with extraterritorial regulation by the States. But they do not foreclose the structural extraterritoriality principle, which is "so obviously the necessary result of the Constitution that it has rarely been called into question." *New York Life Insurance Co.* v. *Head*, 234 U.S. 149, 161 (1914).

The Due Process Clause of the Fourteenth Amendment reinforces the limitations on state authority embodied in the original Constitution by imposing restrictions on personal jurisdiction and choice of law. But the restrictions on personal jurisdiction are designed to protect the rights of *parties*; they are not coextensive with the restrictions on a State's *substantive authority*. See *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 814-815 (1985);

Strassheim, 221 U.S. at 285. And as this case illustrates, personal jurisdiction may not provide much protection for defendants facing such expansive claims; the trial court relied on petitioners' in-state conduct as a basis for exercising personal jurisdiction over claims challenging petitioners' conduct worldwide. See Pet. App. 72a.

The restrictions on choice of law, which are also rooted in the Full Faith and Credit Clause, likewise do not operate to the exclusion of the extraterritoriality principle. See *Ouellette*, 479 U.S. at 499 n.20. And here, respondents have consistently represented that their claims arise under Colorado law, belying any suggestion that choice-of-law questions are yet to come. See, *e.g.*, Resp. Colo. S. Ct. Br. 1, 17, 19, 43; J.A. 130, 133, 136. In any event, the answer would not be to "apply another state's law." Br. 26. Because "greenhouse gases once emitted become well mixed in the atmosphere," *American Electric Power*, 564 U.S. at 422-423, no single State would have any greater claim to regulation than any other.

The dormant Commerce Clause is related to, yet distinct from, "the territorial limits of state authority under the Constitution's horizontal separation of powers." *National Pork Producers*, 598 U.S. at 375 n.1. The Constitution "precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State." *Edgar* v. *MITE Corp.*, 457 U.S. 624, 642 (1982) (plurality opinion); *National Pork Producers*, 598 U.S. at 375 n.1. Respondents contend that the prohibition on extraterritorial regulation is a "more extreme" version of the rule rejected in *National Pork Producers*. Br. 26. Not so. *National Pork Producers* concerned a state regulation of *in-state* conduct that had *out-of-state effects*. See 598 U.S. at 371. The Court allowed that regulation to stand, explaining that, because the regulation had only the "practical effect" of controlling extraterritorial commerce, an "almost *per se*" rule against its validity was unwarranted. *Id.* at 374-375. This case concerns the opposite situation: respondents' attempt to regulate *out-of-state conduct* based on *in-state effects*, which *National Pork Producers* expressly distinguished. See *id.* at 375 n.1. That is the province of the extraterritoriality principle, whose vitality *National Pork Producers* reaffirmed.

III. THE CONSTITUTION PRECLUDES STATE-LAW CLAIMS SEEKING RELIEF FOR INJURIES ALLEGEDLY CAUSED BY INTERNATIONAL GREENHOUSE-GAS EMISSIONS

Respondents' claims are also precluded because they seek redress for the effects of international emissions. The federal government agrees, warning that respondents' lawsuit "invite[s] needless diplomatic friction," "upend[s]" international negotiations, and "usurps the federal government's primacy over foreign relations." U.S. Br. 3-4, 26-28; see Dkt. 12, at 7-8, *United States* v. *Minnesota*, Civ. No. 26-2456 (D. Minn. June 29, 2026) (declaration of Deputy Secretary of State Landau). So do numerous members of Congress and other government officials. See Scalise Br. 27-30; Cruz Br. 19-22; Senior Foreign Affairs Officials Br. 15-23. Respondents address that independent basis for reversal only in passing, and their arguments are unavailing.

Respondents principally argue (Br. 41) that the presumption against preemption applies in the foreign-affairs context. But as part of the plan of the Convention, the States relinquished their authority over foreign affairs; that included the power to seek redress not only for emissions released in other States, but also for those released in other countries. What is more, this lawsuit, and others like it, target American and foreign corporations alike. See Pet. Br. 42. There is no valid basis for applying a presumption against preemption in this context.

Respondents suggest (Br. 41) that there is a blanket rule requiring a "clear conflict" with a treaty or executive agreement. But the better view is that state law should give way if it would "impair the effective exercise of the Nation's foreign policy," *Zschernig* v. *Miller*, 389 U.S. 429, 440-441 (1968), "even absent any affirmative federal activity in the subject area of the state law," *American Insurance Association* v. *Garamendi*, 539 U.S. 396, 418 (2003). The lack of a treaty may reflect nothing more than the ongoing nature of international negotiations or the President's judgment about the national interest. And respondents here do not seriously dispute that their suit would substantially interfere with the foreign policy of the United States. See Br. 41-42. When it comes to our Nation's foreign policy, the President and Congress should decide the appropriate balance between energy production and greenhouse-gas reduction—not a local jury. See *United States* v. *Pink*, 315 U.S. 203, 233 (1942).

IV. THE CLEAN AIR ACT PREEMPTS STATE-LAW CLAIMS SEEKING RELIEF FOR INJURIES ALLEGEDLY CAUSED BY EMISSIONS FROM ANOTHER STATE

A. The Clean Air Act preempts the entire field of interstate air pollution by establishing a comprehensive statutory scheme for the regulation of air quality across the United States. See Pet. Br. 44. Respondents contend (Br. 46) that greenhouse-gas emissions fall outside that field because of the Environmental Protection Agency's recent determination that it would no longer regulate emissions of greenhouse gases from new motor vehicles. See 91 Fed. Reg. 7686 (Feb. 18, 2026). But that determination does not apply to EPA's authority to regulate greenhouse-gas emissions from stationary sources. See

U.S. Br. 34 n.4; 42 U.S.C. 7545(*o*)(2)(A)(i). Regardless, respondents seemingly do not endorse EPA's view. See Br. 46; *Massachusetts* v. *EPA*, No. 26-1061 (D.C. Cir. filed Mar. 19, 2026). It is irrelevant to the analysis in any event. The Clean Air Act "is no less an exercise of the Legislature's 'considered judgment' concerning air pollution because it permits emissions *until* EPA acts." *American Electric Power*, 564 U.S. at 426. And "[w]here a comprehensive federal scheme intentionally leaves a portion of the regulated field without controls," a "pre-emptive inference can be drawn." *Isla Petroleum*, 485 U.S. at 503. That inference would be easy to draw here, given the otherwise comprehensive scope of the Clean Air Act.

Respondents also argue that the Act's saving clauses "negat[e]" any inference of field preemption. See Br. 48 (quoting *Ouellette*, 479 U.S. at 491). Not so. The presence of an exception to a field does not negate the existence of the field. See, *e.g.*, *Pacific Gas & Electric Co.* v. *State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 212 (1983). Congress intended comprehensively to regulate air quality and provided a specific exception for a source State to regulate its own emissions, including emissions causing harm in another State. See 42 U.S.C. 7410(a)(2)(D); Cruz Br. 28-29. If anything, the fact that Congress specified precisely what sort of pollution-abatement laws States may still enact underscores the Act's comprehensiveness.

Respondents rely heavily on *Virginia Uranium, Inc.* v. *Warren*, 587 U.S. 761 (2019), see Br. 50-51, but it is not to the contrary. There, the State regulated in an area of traditional state authority, see 587 U.S. at 770, and the state law did not reach conduct within the preempted field. Here, respondents seek relief for injuries resulting from interstate greenhouse-gas emissions—which fall squarely in the field preempted by the Clean Air Act.

B. Respondents' claims also conflict with EPA's authority to decide "whether and how to regulate" air pollution. *American Electric Power*, 564 U.S. at 426; see U.S. Br. 32-34. The assertion of nationwide authority conflicts with the States' limited role in implementing federally approved emissions standards, see 42 U.S.C. 7411(c); far exceeds the scope of authority preserved by the Act's saving clause, see 42 U.S.C. 7416; and renders obsolete the Act's "Good Neighbor" provision, see 42 U.S.C. 7410(a)(2)(D)(i).

Respondents contend that their suit does not interfere with EPA's role as the "first decider" because their claims regulate "deception" and "sales and production." Br. 47-51. That is a distinction without a difference. See *American Trucking Associations* v. *City of Los Angeles*, 569 U.S. 641, 652 (2013). Because respondents seek relief for injuries allegedly caused by global climate change, their claims conflict with EPA's determinations of whether and how to regulate emissions. See U.S. Br. 29-30.

To be sure, not all state regulations of conduct affecting the level of nationwide greenhouse-gas emissions conflict with the Clean Air Act. For example, gasoline taxes and energy-efficiency standards validly regulate in-state conduct. And the Act's saving clause authorizes States to regulate in-state emissions. See 42 U.S.C. 7416; *Bell* v. *Cheswick Generating Station*, 734 F.3d 188, 196 (3d Cir. 2013), cert. denied, 572 U.S. 1149 (2014). But respondents' claims do far more, by inviting state juries to determine what constitutes a reasonable level of greenhouse-gas emissions worldwide. See *Public Service Co.* v. *Van Wyk*, 27 P.3d 377, 391 (Colo. 2001); *American Electric Power*, 564 U.S. at 428-429. In so doing, respondents' claims intolerably interfere with EPA's role as the "primary regulator of greenhouse-gas emissions." *American Electric Power*, 564 U.S. at 427-428.

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The stakes in this case—not only for the parties but for the entire legal system—could not be higher. If this Court allows the Colorado Supreme Court's decision to stand, it would be blessing the weaponization of state law and sanctioning lawfare in the state courts, by any State or municipality, against one of the Nation's most important industries—an industry that, by providing reliable, affordable energy, is essential to promoting and sustaining our modern way of life.

Climate change is a real and pressing issue. But such a global issue should be solved by political actors on the national and international level through a comprehensive regulatory regime, not decided by hundreds of juries on the local level in cases brought against an arbitrary selection of defendants. Where a plaintiff seeks relief for injuries allegedly caused by global climate change, the plaintiff cannot resort to state law. The judgment of the Colorado Supreme Court should be reversed.

Respectfully submitted.

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